ESSA Provisions Regarding Religious Organizations as Contract Providers Of Equitable Services to Private and Religious Schools

The U.S. Department of Education, in consultation with the U.S. Department of Justice, determined the statutory provisions in the Every Student Succeeds Act that require an equitable services provider to “be independent of any religious organization” are unconstitutional because they categorically exclude religious organizations based solely on their religious identity.

These provisions run counter to the U.S. Supreme Court decision in Trinity Lutheran Church of Columbia, Inc. v. Comer that, under the Free Exercise Clause of the First Amendment of the U.S. Constitution, otherwise eligible recipients cannot be disqualified from a public benefit solely because of their religious character.

In light of the Trinity Lutheran decision, the Department will no longer enforce the provisions that previously restricted school districts from contracting with religious organizations to provide equitable services on the same basis as any other organization. School district may enter into a contract with a religious organization, such as a religiously affiliated college or university, to provide equitable services on the same basis as any other entity.

Such organizations may be reimbursed directly by the local public school district for services provided if they meet these conditions:

- School districts must continue to ensure that any contractor is independent of the private school for which it is providing services
- Services provided must be secular, neutral and non-ideological

Private school officials who engage in the consultation process with the local school districts should note:

- The choice of the faith-based provider must be agreed upon during the consultation process with the district. The district will pay the provider directly for the secular portions of the program but not the religious components.
- Requests for services must demonstrate student needs and how the requested service provider will assist students and educational personnel in meeting those needs.

Please see the NCEA Public Policy federal programs website for details pertaining to Title programs.